

REMARKS

Summary

Claim 1 has been amended to delete to language objected to in the formal rejection thereof. In addition, the amended independent claims recite at least two features not understood to be disclosed or suggested by the Hirai, et al. patent. Therefore, the application is now in allowable form.

Status of the Claims

Claims 1-23 are pending, with Claims 1, 12, 17, 18, and 23 being independent. Claims 1-6, 8-13, 16-19, 22, and 23 have been amended for reasons unrelated to patentability to improve their form. In addition, the phrase “part dependent upon the color of the part” in Claim 1 has been deleted to overcome a formal rejection thereof, and independent Claims 1, 12, 17, 18, and 23 have been amended to address the substantive rejection over the Hirai et al. patent.

Requested Action

Applicant respectfully requests the Examiner to reconsider and withdraw the outstanding rejections in view of the foregoing amendments and the following remarks.

Applicant also respectfully requests that this Amendment be entered. This Amendment could not have been presented earlier as it was earnestly believed that the claims on file would be found allowable. Given the Examiner's familiarity with the application, Applicant believes that a full understanding and consideration of this Amendment would not require undue time or effort

by the Examiner. Moreover, for the reasons discussed below, Applicant submits that this Amendment places the application in condition for allowance. At the very least, it is believed to place the application in better form for appeal. Accordingly, entry of this Amendment is believed to be appropriate and such entry is respectfully requested.

Formal Rejection

Claims 1-11 are rejected under 35 U.S.C. § 112, second paragraph because the Examiner objects to the passage “the part dependent upon the color of the part” in Claim 1. In response, while not conceding the propriety of the rejection, Claim 1 has been amended to delete the objected-to passage, thereby rendering the rejection moot.

Substantive Rejections

Claims 1, 5, 6, 12, 17, 18 and 23 are rejected under 35 U.S.C. § 103(a), as being unpatentable over the patent to Hirai et al. (U.S. Patent No. 6,526,215). Claim 2 is rejected under 35 U.S.C. § 103(a) as being unpatentable over the patent to Hirai et al. in view of the publication to Kinjo (U.S. Patent Publication Application No. 2002/0046100 A1). Claims 3, 4, 13, 14, 19 and 20 are rejected under 35 U.S.C. § 103(a) as being unpatentable over the patent to Hirai et al. in view of the patent to Isadore-Barreca et al. (U.S. Patent No. 6,205,231). Claims 10, 16 and 22 are rejected under 35 U.S.C. § 103(a) as being unpatentable over the patent to Hirai et al. in view of the patent to Dimitrova et al. (U.S. Patent No. 6,754,389). Claims 7-9, 15 and 21 are rejected under 35 U.S.C. § 103(a) as being unpatentable over the patent to Hirai et al. in view of the Platt

publication (“Auto-Album: Clustering Digital Photographs using Probabilistic Model Merging”).

Claim 11 is rejected under 35 U.S.C. § 103(a) as being unpatentable over the patents to Hirai et al. and Dimitrova et al. in view of the patent to Cosatto et al. (U.S. Patent No. 6,118,887).

Response to Substantive Rejections

In response, while not conceding the propriety of the rejections, independent Claims 1, 12, 17, 18, and 23 have been amended. Applicant submits that as amended, these claims are allowable for the following reasons.

Independent Claim 1 relates to a method of identifying, from a set of images, images in which a specified object is present. The method comprising the steps of choosing, from the set of images, an indicative image in which the specified object is present, selecting a part of the object in the indicative image, and tagging certain images in the set of images.

Claim 1 has been amended to recite the step of comparing a color of the selected part to colors of the images belonging to the set of images. Claim 1 has also been amended to recite that the tagging step tags images in the set containing a color that matches the color of the selected part in the indicative image.

The part of the object selected can be a fashion accessory worn by a person, as recited in Claim 2, or any other component parts of an object, as discussed, for example, at page 14 of the application. In addition, the required color matching can be performed, for example, by using a Euclidean distance in an LAB color space to determine whether two pixels are substantially of the same color, as discussed at page 9, lines 14-17 of the specification, or by using fuzzy logic to

“compensate for subtle differences between images due to differences in lighting and color conditions”, as discussed at page 11, lines 23 and 24 of the specification (though the claimed color matching is not limited to these examples).

By selecting a part of an object, such as a fashion accessory worn by a person, and by tagging images containing a color that matches the color of the selected part, automatic identification of images can be performed with heightened accuracy. In contrast, previously developed methods, such as detecting skin color using color histograms, are non-specific and relatively inaccurate, as discussed at page 1 of the application.

The Office Action identifies column 15, lines 35 and 36 of the Hirai et al. patent as teaching the selecting of a part of an object. In addition, the Office Action identifies column 15, lines 43-53 of this patent as showing the tagging of an image if the selected part is found.

But, column 15, lines 35 and 36 of the Hirai et al. patent are not understood to disclose or suggest the step of selecting a part of the object in the indicative image, as recited by amended Claim 1. Rather, this portion of the Hirai et al. patent is merely understood to state that characteristics of the person’s image are extracted:

The editing apparatus extracts features of the instructed person A, e.g., skin color, hair color, height, etc. therefrom, and detect, on the basis of the extracted features, the person A from the videos of the M-icons 701 to 706.

Applicant submits that the extraction of *characteristics* of a person, such as skin color or hair color, is not the same as selecting a *part* of the object, as required by Claim 1.

Thus, the Hirai et al. patent is not understood to disclose or suggest at least one feature of Claim 1. Since MPEP § 2142 requires the cited art to disclose or suggest all the claimed features to establish a prima facie case of obviousness, the Patent Office is not understood to have established a prima facie case of obviousness against Claim 1 over this art. Accordingly, Applicant respectfully requests that the rejection of Claim 1 be withdrawn.

In addition, column 15, lines 43-53 of the Hirai et al. patent is not understood to show the tagging of images in a set containing a color that matches the color of the selected part in the indicative image, as also recited in Claim 1. Rather, this portion of the Hirai et al. patent is merely understood to disclose that videos including a specific target person are identified by an image recognition technique similar “to the aforementioned scene change point detecting method”. This method, discussed at column 1, line 65 through column 2, line 2, merely “analyzes the received moving pictures on a frame basis and detects a scene change point and a cut change point on the basis of a degree of change in a color distribution between frames”. Thus, these passages are not understood to disclose or suggest matching a color to the color of a selected part, as also recited in Claim 1.

Moreover, the comparing of the degree of color distribution between frames is understood to teach away from the claimed method of matching a color to the color of a selected part for two reasons. First, determining a color-distribution change between frames can be performed, for example, by comparing of color histograms of different frames. But as page 1 of the specification indicates, the present invention was designed to substantially overcome or at least ameliorate the disadvantages of using color histograms by proposing a completely different

method of image identification. Second, the method of using a color-distribution change between frames to identify images is a whole-image color distribution comparison method. Such whole-image color distribution comparison methods are based on completely different principles than the present invention, which relies on color matching of a *part* of an object with an image.

Thus, the cited portions of the Hirai et al. patent are not understood to disclose or suggest the part-based color matching of amended Claim 1. And since MPEP § 2142 requires the cited art to disclose or suggest all the claimed features to establish a prima facie case of obviousness, the Patent Office is not understood to have established a prima facie case of obviousness against Claim 1 over this art for this additional reason. Accordingly, for this additional reason, Applicant respectfully requests that the rejection of Claim 1 be withdrawn.

Since independent Claims 12, 17, 18, and 23 are corresponding apparatus, computer program, and computer program product claims that have been amended in a similar manner to Claim 1, they are understood to be allowable for similar reasons.

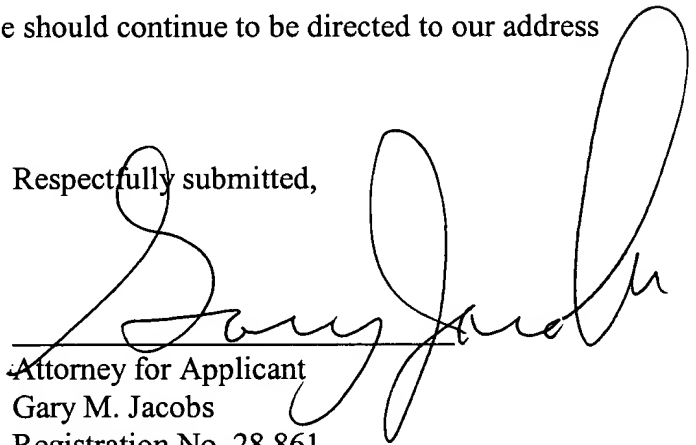
The dependent claims are also submitted to be patentable because they set forth additional aspects of the present invention and are dependent from independent claims discussed above. Therefore, separate and individual consideration of each dependent claim is respectfully requested.

Conclusion

In view of the above amendments and remarks, the application is now in allowable form and entry of this amendment is considered proper. Therefore, early passage to issue is respectfully solicited.

Applicant's undersigned attorney may be reached in our Washington, D.C. office by telephone at (202) 530-1010. All correspondence should continue to be directed to our address given below.

Respectfully submitted,



Attorney for Applicant
Gary M. Jacobs
Registration No. 28,861

FITZPATRICK, CELLA, HARPER & SCINTO
30 Rockefeller Plaza
New York, New York 10112-3800
Facsimile: (212) 218-2200
GMJ:ayr

DC_MAIN 209234v1